



## INDEPENDENT SECTOR

A vital voice for us all

### Chair

William E. Trueheart  
The Pittsburgh Foundation

### Vice Chair

Gary L. Yates  
The California Wellness Foundation

### Treasurer

Paula Van Ness  
Starlight Starbright Children's Foundation

### Secretary

Hilary Pennington  
Jobs for the Future

### President and CEO

Diana Aviv

### BOARD OF DIRECTORS

Edward H. Able, Jr.  
American Association of Museums

Kathleen W. Buechel  
Alcoa Foundation

Robert W. Edgar  
National Council of Churches of Christ in the USA

Lewis M. Feldstein  
New Hampshire Charitable Foundation

David S. Ford  
Richard and Susan Smith Family Foundation

Barry D. Gaberman  
The Ford Foundation

Brian A. Gallagher  
United Way of America

Darell Hammond  
KaBOOM! Inc.

J. Bryan Hehir  
Catholic Charities, Archdiocese of Boston

J.D. Hokoyama  
Leadership Education for Asian Pacifics

Kevin Klose  
National Public Radio

Stanley S. Litow  
IBM Foundation

Janet Murguia  
National Council of La Raza

William D. Novelli  
AARP

John R. Seffrin  
American Cancer Society

Edward Skloot  
Surdna Foundation

Donald M. Stewart  
University of Chicago

Arturo Vargas  
National Association of Latino Elected  
and Appointed Officials

Luz A. Vega-Marquis  
Marguerite Casey Foundation

M. Cass Wheeler  
American Heart Association

William S. White  
Charles Stewart Mott Foundation

Ruth A. Wooden  
Public Agenda

The Honorable  
John W. Gardner (1912-2002)  
Founding Chair

Brian O'Connell  
Founding President and President Emeritus

2006 ANNUAL CONFERENCE  
OCTOBER 22-24, MINNEAPOLIS/ST. PAUL

January 13, 2005

Jay Keithley

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau  
Federal Communications Commission

445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: Rules and Regulations Implementing the Telephone Consumer  
Protection Act of 1991 (CG Docket No. 02-278, DA 05-2975)

Dear Mr. Keithley:

Independent Sector, a national, nonprofit organization with over 500 member charities, foundations, and corporate philanthropy programs, strongly urges the Federal Communications Commission to grant the Petition for Declaratory Ruling of the Fax Ban Coalition (CG Docket No. 02-278). Many of our member organizations send communications that fall within the definition of unsolicited advertisements under federal and some state laws. We believe that the principle of federal preemption of state law in matters of interstate communication should be upheld and that the Commission should issue an order asserting jurisdiction over the regulation of interstate faxed advertisements.

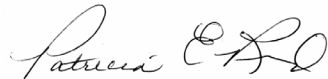
In its petition, the Fax Ban Coalition emphasizes the well-established principle that federal law preempts state law in matters of interstate communications. Based on the Commerce Clause of the U.S. Constitution and the Communications Act of 1934, the application of the preemption doctrine on interstate communications has been upheld numerous times by the courts. The FCC itself relied upon this principle in its order released July 3, 2003 with respect to attempts by states to regulate interstate telemarketing. The Commission stressed the goal of establishing uniform national rules and observed that "any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted."<sup>1</sup> As the federal fax law is contained in the same section of the U.S. Code as the telemarketing

statute, the Commission should adopt the same position with respect to preemption of state fax laws.

Many nonprofit organizations send interstate fax messages that would comply with federal law but could be considered unsolicited advertisement depending on the wording of the particular state law or regulation.<sup>2</sup> For example, nonprofits may fax membership dues renewals and advertisements for seminars or conferences for which a fee is charged. Complying with potentially 50 different state laws would be extremely confusing and burdensome for nonprofit organizations. For instance, the recently enacted California fax law<sup>3</sup> does not include the established business relationship (EBR) exemption added to the federal law last year. The EBR exemption in federal law will facilitate fax communications between nonprofit organizations and their members with respect to products and services for which a fee is charged. It is unreasonable for organizations to re-evaluate fax messages that are permissible under federal law to determine whether they will require prior express permission from their California members.

Independent Sector and its member organizations respect the goal of protecting consumers from receiving unwanted fax communications, but we believe that this can be done most effectively with a uniform federal rule. We thank the Commission for this opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Read", followed by a stylized monogram or set of initials.

Patricia Read  
Senior Vice President, Public Policy and Government Affairs  
Independent Sector

---

<sup>1</sup> Report and Order In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, p. 51, ¶ 84.

<sup>2</sup> Federal law defines unsolicited advertisement as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." Telephone Consumer Protection Act of 1991, 47 USC § 227(a)(4), *as amended by* the Junk Fax Prevention Act of 2005, Pub. L. 109-21, 119 Stat. 359.

---

<sup>3</sup> SB 833, 2005-2006 Sess. (Cal. 2005).